

## **OFFICE OF NEBRASKA PROBATION ADMINISTRATION**

### **RULE GOVERNING APPROVAL OF CONTINUOUS ALCOHOL MONITORING DEVICES AND MEANS OF INSTALLATION**

**1. Statutory Authority.** This rule is promulgated under the authority of Neb. Rev. Stat. § 60-6,211.09 (Cum. Supp. 2006).

**2. Purpose.** The purpose of this rule is to establish standards for continuous alcohol monitoring and for the approval, installation and use of such devices by individuals sentenced to probation.

**3. Definitions.**

- a. Continuous alcohol monitoring device means a portable device capable of automatically and periodically testing and recording alcohol consumption levels and automatically and periodically transmitting such information and tamper attempts regarding such device, regardless of the location of the person being tested. Neb. Rev. Stat. § 60-614.01 (Cum. Supp. 2006).
- b. "BAC" shall mean the blood alcohol concentration expressed in percent weight by volume (% w/v) based upon grams of alcohol per 100 milliliters of blood.
- c. "BAC FAIL" shall mean the condition in which the continuous alcohol monitoring device registers a BAC value in excess of the alcohol setpoint limit.
- d. Setpoint shall mean the minimum confirmation level of .020 BAC.
- e. Tamper shall mean an overt conscious attempt to defeat the technology, prevent an alcohol test and/or to remove the device.
- f. Court shall mean the judge who sentences a person and as a condition of probation imposes the use of a continuous alcohol monitoring device.
- g. Administration shall mean the Office of Nebraska Probation Administration.
- h. Administrator shall mean the Administrator of the Office of Nebraska Probation Administration or his or her designee.
- i. An individual sentenced to probation shall mean a defendant who has been convicted of a second or subsequent violation of Neb. Rev. Stat. § 60-6,196 or § 60-6,197 and given a sentence of probation which includes the use of a continuous alcohol monitoring device as provided within Neb. Rev. Stat. § 60-6,197.01(2).

#### 4. Standards

In order to obtain approval of the Administration as an approved continuous alcohol monitoring device, a manufacturer shall confirm in writing to the Administrator that the unit(s) comply, or substantially comply, with the following specifications and requirements.

- a. The continuous alcohol monitoring device shall contain a bracelet, a modem and a secure web-based network application.
- b. The bracelet shall be worn 24 hours per day, 7 days per week by an individual sentenced to probation and the bracelet shall contain a sensor pack that measures ethanol vapor as it mitigates through the skin to determine BAC. The bracelet shall be tamper-resistant, water-resistant and wear-resistant. The bracelet shall collect, store and transfer data via an RF link to the modem. The bracelet shall sample the individual sentenced to probation at least once per hour and every reading shall be date-stamped, time-stamped and stored in a memory chip. If the bracelet detects alcohol or a tamper attempt, the bracelet shall automatically begin sampling every 30 minutes until alcohol is no longer present. The bracelet shall make an attempt to communicate with the modem after each test.
- c. A modem is placed in the home (or another approved telephone-enabled location) of the individual sentenced to probation. At a scheduled time each day, the individual sentenced to probation shall be required to be within 30 feet of the modem so as the bracelet can communicate with the modem. Using a proprietary 9000 MHz frequency, the modem shall retrieve all available data from the bracelet. In the event of a positive reading or a tamper alarm, the bracelet shall immediately begin looking for the modem and the data shall upload as soon as the individual sentenced to probation is within range. When a data transmission occurs, the modem shall send all data to a secure web-based network application via a standard telephone line. Alcohol reading, tamper alerts and diagnostic data are all communicated to the aforesaid secure web-based network application. In turn, the secure web-based network application uses the modem to download monitoring and reporting schedules to the bracelet.
- d. The secure web-based network application shall be accessed via the Internet using a standard web browser so that monitoring personnel control the testing, synchronization and reporting schedules for each individual sentenced to probation. Within one working day, the manufacturer or their representative shall notify the court of all positive alcohol readings, tamper alerts or equipment malfunctions. The secure web-based network application additionally shall offer around the clock access to all test results from any location.
- e. The manufacturer and/or representative shall supply for each continuous alcohol monitoring device a warning label which shall carry the following language, "WARNING! ANY ACTUAL OR ATTEMPTED TAMPERING OF THIS DEVICE CAN SUBJECT YOU TO ADDITIONAL PENALTIES."

- f. Upon the demonstration by the manufacturer of a continuous alcohol monitoring device that said device complies, or substantially complies, with the criteria outlined by the aforesaid standards, the Administrator may issue a certificate of approval. The Administrator shall maintain a list of approved continuous alcohol monitoring devices and their manufacturers or representative.

## **5. Installation and Maintenance**

In addition to the aforesaid standards, use of continuous alcohol monitoring devices installed pursuant to a court probation order shall also be subject to the following requirements:

- a. **Installation:** Continuous alcohol monitoring devices shall be installed by the manufacturer or by private sector providers in conformance with the directions of the manufacturer. A continuous alcohol monitoring device shall be used in accordance with the prescribed procedures and maintenance of the manufacturer.
- b. **Phone Line:** To the extent required for proper operation of the device, individuals sentenced to probation are required to maintain a phone line unless the court approves another telephone-enabled location. All phone bills associated with the program are paid by the individual sentenced to probation. Individuals sentenced to probation will be responsible for limiting the use of the phone or internet use via the phone line during the hours when the individuals sentenced to probation is scheduled for downloads.
- c. **Payment:** Individuals sentenced to probation are required to pay a per-day fee as set by the manufacturer, in conjunction with the Office of Probation Administration. Additionally, a one-time fee is assessed for initial installation and activation of the equipment. Fees are to be paid monthly in advance to the manufacturer or their representative.
- d. **Employment:** Individuals sentenced to probation are not required to be employed to be eligible for the continuous alcohol monitoring device, however, they will be held financially responsible for the costs associated with the program.
- e. **Copy:** The manufacturer or their designated representative shall furnish the Office of Probation Administration or designated probation office a written copy of verification that a continuous alcohol monitoring device has been installed.
- f. **Reporting Requirements:** The manufacturer or their designated representative shall report to the Office of Probation Administration or designated probation office at the end of the monitoring period or upon a written request, a complete record of installation and usage records of a continuous alcohol monitoring device placed in service by the court.
- g. **Reporting Requirements to the Administration:** The manufacturer or their designated representative shall report to the Administration when requested, a complete record of installation and usage records of any continuous alcohol monitoring devices placed in service in Nebraska.

- h. Independent Checks on Continuous Alcohol Monitoring Devices: The Administration may conduct or have conducted independent checks on any of the approved continuous alcohol monitoring devices to determine if the devices are operating within this rule. If the check indicates that this rule is not being followed, the Administration shall require the manufacturer or their designated representative installer to correct any abnormality found in the installation or usage records of the device. The manufacturer or their designated representative installer shall report in writing to the Administration within 30 days after receiving notification of the abnormality. The Administration shall have the authority to remove from the list of approved continuous alcohol monitoring devices, any device, any manufacturer of a device or any representative of a manufacturer not found to be in compliance with this rule.

## **6. Court Proceedings**

Nothing in this rule shall prohibit an individual from raising any valid defense in a court proceeding involving the device referred to herein.